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Promoting Agricultural Exports: The Agricultural Trade Act of 1978 - Pub. L. No. 95-501, 92 Stat. 1685 (to Be Codified in Scattered Sections of 7 U.S.C.)

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Promoting Agricultural Exports: The Agricultural Trade Act of 1978—Pub. L. No. 95-501, 92 Stat. 1685 (to be codified in scattered sections of 7 U.S.C.)

The United States has an agricultural capacity unequalled in the world. At one time in its history it also had an unrivalled industrial capacity. With strong economic bases in both farming and manufacturing, the United States led the rest of the world in the number and value of exports for many years.[1] However, the United States is no longer out in front in the trade race. Western Europe and Japan, with their improved technologies and impressive marketing techniques, are upstaging the United States as leaders in trade. But this displacement has been limited to nonagricultural goods;[2] the United States has maintained its position as a leading exporter of agricultural goods. In fact, in 1977, when the United States suffered an abysmal $30 billion trade deficit,[3] the export of agricultural goods was the only positive factor in its balance of trade.[4] Clearly an increase in the number of agricultural exports could play an important role in reversing the American trade deficit.

The federal government did not fully realize the significance of agricultural exports until 1978.[5] Until then the government's promotional efforts for overseas marketing of U.S. agricultural products were not dynamic. In comparison to its major competitors, the United States expended a meagre .1% of its total budget for export market development promoting agricultural exports.[6] In 1978, however, the Department of Agriculture took its first steps toward improving its marketing tech-

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[1] Between 1937 and 1970 the United States enjoyed a positive balance of trade ranging from a low of $289 million in export surplus in 1937 to an unmatched $10,275 million in export surplus in 1944. In 1971, however, U.S. imports exceeded U.S. exports by $2,024 million. U.S. exports gained again in 1973 and in 1975, but the balance of trade slipped to −$29,942 million in 1977. S. REP. NO. 1142, 95th Cong., 2d Sess. 51 (1978).

[2] *Id.* In 1977 imports of nonagricultural commodities outvalued exports by approximately $40 billion while exports of agricultural products outvalued imports by $10 billion.

[3] *Id.*

[4] *Id.* In 1977 the sale of agricultural products abroad accounted for roughly $24 billion, $10 billion more than the value of imported agricultural products.

[5] *Id.* at 4. Although the level of export sales of agricultural products has increased dramatically from $9 billion in 1973 to roughly $24 billion in 1977, the percentage of total exports made up by agricultural products has changed only slightly over the same period.

[6] H.R. REP. NO. 1338, pt. 1, 95th Cong., 2d Sess. 8 (1978). Australia, on the other hand, spent 1.1% of its budget promoting agricultural products, New Zealand spent 0.89%, and South Africa and Denmark each spent 0.72%.

niques. First, it devoted 15% of its budget to funding a program for export market development cooperators.[7] Second, the Foreign Agricultural Service,[8] a division of the Department of Agriculture, instituted several efforts to increase wheat and grain sales to developing, communist and OPEC countries.[9] Third, the Department of Agriculture opened an agricultural trade office in London, the first of its kind, and announced plans to open a second office in Tokyo.[10]

Institution of the above programs unquestionably demonstrated the federal government's new awareness of the need to encourage sales of agricultural products abroad. However, several congressmen felt that further, more far-reaching steps still needed to be taken.[11] Consequently, legislation was enacted, and on October 21, 1978, President Carter signed the Agricultural Trade Act of 1978.[12]

The Agricultural Trade Act of 1978 (ATA) introduces four measures to expand the overseas market for U.S. agricultural products. Perhaps the most innovative and certainly the most controversial of these is the intermediate credit program, which bridges the present gap in financing between the Commodity Credit Corporation's (CCC)[13] financ-

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[7] S. REP. NO. 1142, *supra* note 1, at 34. Export market cooperators are commodity organizations, primarily private trade associations, that work with the Foreign Agricultural Service (FAS) to promote exports of their individual commodities. The U.S. Meat Export Federation is an example of a cooperator. It has four charter member organizations: the American Meat Institute, The National Cattlemen's Association, the National Pork Producers Council and the National Independent Meat Packers Association. In 1977 it signed a cooperative agreement with the FAS to provide joint funding for developing markets for U.S. meat products. *Hearing Before the Subcommittee on Oilseeds and Rice and Subcommittee on Livestock and Grains of the Committee on Agriculture*, 95th Cong., 1st Sess. (1977) (Statement of Secretary Bergland) [hereinafter cited as *House Hearing*].

[8] The Foreign Agricultural Service serves as a liaison between U.S. growers and potential foreign buyers. It provides an estimated 2.4 million farmers with information on export opportunities. H.R. REP. NO. 1338, pt. 2, 95th Cong., 2d Sess. 8 n.1 (1978).

[9] Specifically, a wheat sales office was opened in Morocco and a feed grains office in Singapore. S. REP. NO. 1142, *supra* note 1, at 34. Trade servicing was instituted in the Middle East, including a regional press service run by the Rice Council. *House Hearing, supra* note 7, at 22. Wheat market development is coordinated by two cooperators, Western Wheat Associates and Great Plains Wheat. The former runs the program in Asia, and the latter in Europe, Africa, the Middle East and Latin America. *House Hearing, supra* note 7, at 25.

[10] S. REP. NO. 1142, *supra* note 1, at 34.

[11] Among the legislation introduced in the Second Session of the 95th Congress dealing with agricultural exports were S. 2385, introduced by Senator Byrd for Senator Humphrey; S. 2405, introduced by Senator Lugar; S. 2504, introduced by Senator Dole; and S. 2968, introduced by Senator Clark.

[12] Pub. L. No. 95-501, 92 Stat. 1685 (to be codified in scattered sections of 7 U.S.C.) [hereinafter cited as ATA]. On January 26, 1978, Representative Mathias introduced H.R. 10584, an act entitled "The Agricultural Trade Act of 1978." The bill was referred to the House Committees on Agricultural and International Relations. Similar legislation was subsequently introduced as S. 3447 by Senator Stone. The Senate Committee on Agriculture, Nutrition and Forestry reviewed and approved S. 3447, which passed in lieu of H.R. 10584 on October 21, 1978.

[13] Pub. L. No. 89-808, § 4, 80 Stat. 1526 (codified as amended at 7 U.S.C.A. § 1701a (West 1973 & Supp. 1979)). The Commodity Credit Corporation is an agency of the United States under the direction of the Department of Agriculture. It was enacted pursuant to the Commodity Credit Corporation Charter Act of June 29, 1948, 15 U.S.C. § 714, and its purpose

ing program and long-term credit under the Agricultural Trade Development and Assistance Act of 1954 (AAA).[14] The ATA also extends the CCC's financing program to deferred payment sales and opens its export credit sales and deferred payment sales programs to the People's Republic of China.[15] The final two measures contained in the ATA reflect Congress' concern about the colorless marketing techniques heretofore employed by American diplomatic missions. Title III of the ATA upgrades the title of the top agricultural official in U.S. embassies from "Agricultural Attaché" to "Agricultural Counselor,"[16] and title IV establishes from six to twenty-five agricultural trade offices in other countries.[17] This note will explore these four methods of improving agricultural exports by examining the congressional reasoning behind their adoption.

I. The Intermediate Credit Program

Title I of the ATA amends section 4 of the Food for Peace Act of 1966.[18] This amendment creates a financing arrangement supplementing the currently successful short-term credit program of the CCC. The short-term credit program, also known as the export credit sales program, is a limited form of financing available for commercial sales of agricultural goods out of private stocks.[19] Its credit terms extend from six months to three years.[20]

The ATA amendment to section 4 introduces the intermediate credit program. This program, in contrast to the export credit sales program, extends the CCC's power to finance commercial sales of agricultural goods from both private and CCC stocks and lengthens CCC credit coverage to terms of between three and ten years.[21]

Congress devised the intermediate credit program to meet the needs of countries that have historically participated in the AAA long-term financing program, but that have recently improved their economic status enough so as to lose their eligibility.[22] The AAA program offers

is to "stabilize and protect farm income and prices, to assist in maintaining balanced and adequate supplies of agricultural commodities and their products, and to facilitate the orderly distribution of commodities." OFFICE OF THE FEDERAL REGISTER, GOVERNMENT MANUAL 123 (1979/80).

14 Pub. L. No. 83-480, 68 Stat. 454 (codified in scattered sections of 7 U.S.C.) (1976).

15 Pub. L. No. 95-501, § 202, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707c (West Supp. 1979)).

16 *Id.* § 301 (codified at 7 U.S.C.A. §§ 1761-1768 (West Supp. 1979)).

17 *Id.* § 401 (codified at 7 U.S.C. § 1765a (1979)).

18 *Id.* tit. I (amending Pub. L. No. 89-808, § 4, 80 Stat. 1526).

19 Private stocks refer to agricultural holdings produced and owned by nongovernmental persons.

20 7 U.S.C.A. § 1707a(a) (West Supp. 1979)).

21 Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(1) (West Supp. 1979)).

22 H.R. REP. NO. 1338, pt. 1, *supra* note 6, at 9. The President has the power to designate whether countries are eligible for the AAA credit. Certain criteria must be met; for example,

credit terms over long periods of time at extremely low interest rates.[23] This has been a costly program to the U.S. government in terms of the amount of actual subsidies given, yet it has been effective as a market developer. The CCC export credit sales program, which provides financing at relatively higher interest rates[24] for shorter periods of time, also has a good record as a market developer but is not as expensive to the U.S. government.[25] Countries no longer qualifying for long-term financing because of their improved economic condition may nonetheless be excellent markets for U.S. agricultural commodities;[26] yet if they are unable to afford the higher interest rates and shorter periods of repayment under the export credit sales program, the United States will probably lose them as markets. Hence, the intermediate credit program serves to smooth the transition from the comfortable concessional terms of the AAA long-term financing program to the harsher nonconcessional terms of the CCC short-term export credit sales program by charging the latter's higher interest rates while at the same time allowing a longer period in which to make the repayment.[27]

The Department of State did not receive the intermediate credit program favorably, fearing that the United States might thereby promote a credit war.[28] In its opinion the program was designed to increase competition in existing markets rather than create new markets. The introduction of better credit terms by the United States, it argued, would only prompt the country's major competitors in agricultural exports to extend similar terms [29] The Department of State further maintained that the intermediate credit program would weaken the country's balance of payments position by eliminating sales that would ordinarily have occurred on a cash basis or on short-term credit terms.[30]

Congress responded to this criticism by expressly prohibiting use of the ATA intermediate credit to encourage credit competition.[31] It fur-

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the country must take steps to improve its food production, marketing, distribution and storage systems. 7 U.S.C. § 1272a (1976).

[23] Senate and House committees refer to AAA financing as covering periods of 20 to 40 years. S. REP. NO. 1142, *supra* note 1, at 6; H.R. REP. NO. 1338, pt. 1, *supra* note 6, at 9.

[24] In 1977 interest rates under the CCC short-term credit program ranged from 8 1/2% to 9 1/2%. S. REP. NO. 1142, *supra* note 1, at 56.

[25] *Id.* at 55; H.R. REP. NO. 1338, pt. 1, *supra* note 6, at 9.

[26] Among the countries no longer qualifying for long-term financing that would clearly remain good U.S. export markets should intermediate credit coverage be extended are Israel, Portugal, Tunisia, Syria, Korea, Jordan and Peru. S. REP. NO. 1142, *supra* note 1, at 6.

[27] Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(5) (West Supp. 1979)).

[28] *Hearings Before the Subcommittee on Foreign Agricultural Policy of the Committee on Agriculture, Nutrition, & Forestry, on S. 2385, S. 2405, S. 2504, S. 2968, S. 3011*, 95th Cong., 2d Sess. 46-47 (1978) (Statement of Stephen Bosworth) [hereinafter *Senate Hearings*].

[29] Canada, Australia and Argentina are the major U.S. competitors in agricultural exports. H.R. REP. NO. 1338, pt. 1, *supra* note 6, at 24; S. REP. NO. 1142, *supra* note 1, at 9.

[30] *Senate Hearings, supra* note 28, at 47.

[31] Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(3)(D) (West Supp. 1979).

ther required that purchasing countries meet certain eligibility standards in order to qualify for intermediate credit.[32] For example, before financing any export sale under intermediate terms the Secretary of Agriculture must first determine that the sale will either develop, expand or maintain the purchasing nation as a foreign market for the commercial sale of U.S. agricultural commodities.[33] The Secretary further reduces the number of eligible countries by requiring first that the above transactions occur without displacing any normal commercial sales activity,[34] and second, that they maintain the purchasing countries as markets for a long period of time.[35] If the sale neither develops, expands nor maintains the purchasing country as a foreign market for U.S. agricultural goods, but otherwise improves its capability to buy U.S. agricultural goods on a long-term basis, the sale will also qualify for intermediate credit.[36]

The intermediate credit is thus available to purchasing countries if its use would build or maintain a new market for American farm products. The ATA lists four permissible uses for intermediate credit. The first permissible use involves financing the cost of importing breeding livestock,[37] including the cost of freight.[38] The intermediate credit program particularly suits financing of livestock because livestock has a relatively long life of productivity and requires additional purchases of related agricultural commodities like grains and oilseeds.[39] Thus, the sale of one commodity on intermediate terms may result in the subsequent purchase of other agricultural commodities on short-term credit. To illustrate, the export of breeding livestock by definition increases the foreign market for U.S. livestock. Concomitantly, the market for U.S. grains and oilseeds is enlarged because the livestock needs food to survive, and the importing country may not have the appropriate feed on hand. The shortage in feed thus results in a subsequent purchase of grains and oilseeds from the United States on short-term credit to feed the livestock purchased on intermediate credit.

Congress also reasoned that the sale of livestock on such terms was appropriate because of the current high cost of shipping from the United States to countries presently purchasing livestock.[40] U.S. exporters typically ship livestock by air to cut down on the chance of disease and distress. Western European exporters, on the other hand, are able to transport livestock by sea because of their closer proximity to purchasing

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[32] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(2) (West Supp. 1979)).

[33] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(2)(A) (West Supp. 1979)).

[34] *Id.*

[35] *Id.*

[36] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(2)(B) (West Supp. 1979)).

[37] The term "livestock" refers to breeding cattle, dairy cattle, swine, sheep and poultry. S. REP. NO. 1142, *supra* note 1, at 22.

[38] Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(3)(B) (West Supp. 1979)).

[39] S. REP. NO. 1142, *supra* note 1, at 6.

[40] *Id.* at 22.

countries. This form of transport naturally results in lower freight costs. Thus, in order to reduce the competitive edge Western European nations gain through their cheaper method of transport, Congress extended intermediate credit to the cost of freight.

The inclusion of freight costs under the intermediate credit program created a furor in Congress regarding the application of the cargo preference law, which regulates the nationality of vessels transporting U.S. products.[41] The ATA excludes intermediate credit arrangements from this law for two reasons. First, since Congress drafted the terms of intermediate credit to parallel the terms of short-term credit in every major respect except for repayment terms, the exemption from the cargo preference law granted to short-term credit arrangements was likewise extended to intermediate credit arrangements.[42] Second, since Congress anticipated that intermediate credit financing would be primarily employed for the export of livestock, which is shipped by air and not by sea, the cargo preference law was not even considered relevant.[43]

The second permissible use for intermediate credit involves establishing reserve stocks[44] consistent with international commodity agreements or other stock building plans acceptable to the United States.[45] Here again the Department of State was wary of extending the intermediate credit program. At the time of the Senate hearings on the ATA,[46] the United States was already engaged in multilateral trade negotiations concerning grains, dairy products and meat.[47] Furthermore, bilateral talks were underway discussing the wisdom of current tariff measures af-

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[41] Section 901(b) of the cargo preference law, Pub. L. No. 83-664, 68 Stat. 832 reads as follows:

> [W]henever the U.S. shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provisions for reimbursement, any equipment, materials, or commodities, within or without the U.S., or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities . . . which may be transported on ocean vessels shall be transported on privately owned U.S. flag commercial vessels . . . .

In 1954 the U.S. Attorney General ruled that Section 901 did not extend to existing CCC short-term credit programs because of the latter's commercial terms.

[42] Note, however, that ocean freight costs are not funded under short-term credit arrangements. S. REP. NO. 1142, *supra* note 1, at 56.

[43] H.R. REP. NO. 1338, pt. 2, 95th Cong., 2d Sess. 13 (1978).

[44] The term "reserve stocks" refers to food production supplies kept by the government to be made available during crises.

[45] Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(3)(A) (West Supp. 1979)).

[46] The Senate hearing on S. 3447 took place on April 27, 1978.

[47] The multilateral trade negotiations referred to here are the Tokyo Round negotiations begun in September 1973 in Tokyo and concluded in April 1979 in Geneva. Implementation of the international agreements by Congress is expected sometime in the fall of 1979. For a discussion of these agreements, *see* Graham, *A Practitioner's Guide to the Tokyo Round Trade Negotiations*, 4 N.C.J. INT'L L. & COM. REG. 225 (1979).

fecting specific agricultural commodities.[48] The government reasoned that it had two roles to play in the promotion of agricultural exports: first, "to facilitate the efforts of our producers and traders; such as providing services to assure the standards and quality of U.S. products, information, and analysis on world markets, and adequate trade credits to meet competitive needs;" and second, "to defend our producers against discriminatory and unfair treatment resulting from the action of other governments."[49] Extending financing to other countries in order to help establish their reserve food supplies seemed beyond the U.S. government's obligations. However, countering this concern was the argument that the existence of intermediate credit would encourage poorer countries, which until now had not entered into international emergency food agreements, to enter into such agreements and thus contribute to the world food reserve.[50] This reasoning persuaded the Department of State to accept the use of intermediate credit to establish foreign reserve stocks.[51]

The third permissible use for intermediate credit is financing the construction of unloading, storage and processing facilities.[52] Often in the past an importing nation could not purchase bulk agricultural commodities because it had no place to store them once they arrived.[53] The ATA provides financing for the construction of accommodating facilities to encourage the unobstructed flow of U.S. agricultural products into the importing nation.

Agriculture Secretary Bergland, in a letter to Senator Talmadge, Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, expressly opposed the use of the credit for this purpose. Secretary Bergland stated, "[I]n our view, intermediate credit should only be made available to credit worthy countries for specified market development purposes, when other sources of financing are limited or unavailable."[54] Thus the Secretary agreed to the use of intermediate credit for financing the sale of livestock and the establishment of reserve stocks, but did not support its use for building storage facilities unless no other means of financing were available. The Senate subcommittee studying the bill[55]

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48 Bilateral discussions were being held separately from the multilateral trade negotiations to speed up the implementation of treaties dealing with individual commodities. For example, the United States and Canada concluded a separate treaty on meat importation in December 1976. Agreement on Trade: Meat Imports, Dec. 23-29, 1976, U.S.-Canada, 28 U.S.T. 8093, T.I.A.S. No. 8744.

49 S. REP. NO. 1142, *supra* note 1, at 30-31.

50 *Id.* at 7.

51 Note that no such emergency grain reserves existed at the time of the Committee's discussion of this provision. *See* text accompanying note 38 *supra*.

52 Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(3)(C) (West Supp. 1979)).

53 S. REP. NO. 1142, *supra* note 1, at 7.

54 *Id.* at 36.

55 The Senate Subcommittee on Foreign Agricultural Policy held executive sessions on export promotion legislation on June 21 and July 21, 1978.

offered a similar suggestion by proposing that the storage and other accommodating facilities could be financed by local currencies generated through the sale of U.S. agricultural products purchased on intermediate credit.[56] The subcommittee referred to this method as "indirect" financing under the intermediate credit program.[57] The subcommittee did not, however, expressly prohibit a direct financing of the facilities, and the final draft included it as a permissible use of the intermediate credit.

The final use for intermediate credit specified in the ATA involves meeting credit competition for the sale of agricultural exports.[58] This use, obviously the broadest of the four listed, met with the most disfavor because of the danger of encouraging credit wars. For this reason, the section immediately following this provision prohibits the use of intermediate credit to encourage credit competition.[59] Thus Congress clearly drafted the statute to ensure that the credit may be used to keep the United States competitive in the credit market for agricultural exports, while prohibiting its use to initiate another level of competition in the form of a credit war.

Countries seeking to purchase U.S. agricultural commodities under intermediate credit terms must undergo considerable review before their purchases are approved.[60] Initially, the Secretary of Agriculture must approve the purchase.[61] Then the President makes a determination as to whether such a sale threatens national interests.[62] If the President makes a favorable determination, the Secretary transmits his and the President's recommendations to the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture.[63] Thirty days later the sale becomes effective.[64] All purchases except those establishing reserve stocks are subject to continuing review by the National Advisory Council on International Monetary and Financial Policies.[65]

II. Deferred Payment Sales

The second of the four major methods for enhancing overseas sales of agricultural products is the extension of CCC financing to deferred payment sales.[66] Deferred payment sales refer to private transactions made between a non-government U.S. exporter and an importing na-

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[56] S. REP. NO. 1142, *supra* note 1, at 22.

[57] *Id.*

[58] Pub. L. No. 95-501, § 101, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1707a(b)(3)(D) (West Supp. 1979)).

[59] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(4) (West Supp. 1979)).

[60] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(7)(B) (West Supp. 1979)).

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.* If Congress is not in session at the time of the transmittal, the agreement will go into effect sixty days after the transmittal.

[65] *Id.* (codified at 7 U.S.C.A. § 1707a(b)(7)(A) (West Supp. 1979)).

[66] *Id.* § 201 (codified at 7 U.S.C.A. § 1707b (West Supp. 1979)).

tion. Frequently countries prefer working with individuals rather than with government agencies. Until now such transactions had been ineligible for U.S. government sponsored financing unless the importing country had dealt directly with the government. Section 201 of the ATA, however, puts some flexibility into these transactions by permitting the non-government U.S. exporter to negotiate the importing country's financing arrangements with the CCC.[67] Accordingly, the exporter, and not the importing country, can now apply to the CCC to obtain financing for his sales to the importing country under the CCC's ordinary export credit sales program.

Although section 201 requires only the U.S. exporter to deal directly with the U.S. government, the importing country must nonetheless meet certain eligibility standards.[68] The standards for CCC financing of deferred payment sales are nominally the same as under the export credit sales program,[69] but in fact may be considerably higher in light of the discretion given the Secretary in approving these agreements. CCC financing of deferred payment sales is also subject to review by the National Advisory Council on International Monetary and Financial Policies.[70]

Section 202 of the ATA extends the CCC's export credit sales and deferred payment sales programs to the People's Republic of China.[71] The House version of the ATA would have extended these two financing programs to other nonmarket (communist) countries as well. In title IV of H.R. 10584 such countries could obtain credit terms of up to three years if their purchases of U.S. agricultural products exceeded the average of their purchases between 1975 and 1977.[72] However, the final conference version of the ATA deleted title IV of H.R. 10584. The conference committee reasoned that even though the House version

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67 *Id.*

68 The eligibility standards under the CCC export credit sales program are as follows:

> When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:
>
> (a) Permit U.S. exporters to meet competition from other countries.
>
> (b) Prevent a decline in U.S. commercial export sales.
>
> (c) Substitute commercial dollar sales for sales made pursuant to Pub. L. No. 480 or other concessional programs.
>
> (d) Result in a new use of the agricultural commodity in the importing country.
>
> (e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

7 C.F.R. § 1488.3 (1978).

69 Pub. L. No. 95-501, § 201, 92 Stat. 1695 (codified at 7 U.S.C.A. § 1707b(a) (West Supp. 1979)).

70 *Id.* § 201(e) (codified at 7 U.S.C.A. § 1707b(e) (West Supp. 1979)). *See* text accompanying note 57 *supra* for a discussion of the function of the National Advisory Council on International Monetary and Financial Policies.

71 *Id.* § 202 (codified at 7 U.S.C.A. § 1707c (West Supp. 1979)).

72 H.R.10584, 95th Cong., 2d Sess. § 402(1) (1978).

made title IV subject to the restrictions of the AAA, which prohibit the extension of credit to Soviet-bloc countries,[73] such a proposal might open the door to an indiscriminate extension of CCC financing to all communist countries except the U.S.S.R.[74] The Committee ultimately determined that unless the nonmarket economy countries have been accorded most-favored-nation (MFN) status,[75] they should remain ineligible to receive credit from either the CCC or the AAA. To provide otherwise, it maintained, would mean the revision or repeal of section 402(a) of the Trade Act of 1974,[76] which denies MFN status to states restricting the rights of persons to emigrate to the country of their choice.

The People's Republic of China is not excluded from receiving credit under the AAA nor is it restricted by section 402(a) of the Trade Act.[77] Nonetheless, it is a communist nation not yet accorded MFN status. Title II of the ATA thus introduces an innovative compromise of MFN status exclusive to the People's Republic of China. Although the P.R.C. does not enjoy lower tariff duties on its exports to the United States or automatic participation in U.S. government credit programs—two important benefits of MFN status—it can now, to a limited degree, obtain CCC financing. Under title II of the ATA both the export credit sales and deferred payment sales programs are available to the P.R.C. to

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[73] Section 103(d)(1) of the Agricultural Trade Development and Assistance Act of 1954, Pub. L. No. 83-480, 68 Stat. 454 (codified in scattered sections of 7 U.S.C. (1976)), excludes "any country or area dominated by a foreign government or organization controlling a world Communist movement" from receiving any form of U.S. credit. 7 U.S.C. § 1703(d)(1) (1976). Hence the extension of CCC financing to the P.R.C. makes it clear the P.R.C. is not considered a country dominated by the U.S.S.R.

[74] There is still some question as to whether other nonmarket economy countries lacking MFN status, *i.e.*, the German Democratic Republic, Czechoslovakia and Bulgaria, also fall under the section 103(d)(1) classification. H.R. REP. NO. 1338, pt. 2, *supra* note 38, at 14.

[75] Poland, Yugoslavia, Romania and Hungary are not market economy countries, but nonetheless have been extended MFN treatment. S. REP. NO. 1142, *supra* note 1, at 8.

[76] Pub. L. No. 93-618, 88 Stat. 1978 (codified at 19 U.S.C. § 2432 (1976)).

> Sec. 402(a). To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly, or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—
>
> (1) denies its citizens the right or opportunity to emigrate;
> (2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or
> (3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen to emigrate to the country of his choice,
>
> and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

[77] *See* note 15 and accompanying text *supra*. This point has been rendered moot since the People's Republic of China was accorded Most Favored Nation status on Feb. 1, 1980. *See* 48 U.S.L.W. 2533 (1980).

finance imports of U.S. agricultural products.[78]

III. Agricultural Counselors

The third method by which the ATA proposes to enhance export sales of agricultural commodities is by upgrading the title of the chief agricultural officer in a number of U S. diplomatic missions.[79] This upgrading is merely a cosmetic change in the existing law. Nonetheless, Congress felt that it was necessary since the title of "Agricultural Attaché" has not commanded the respect of foreign officials required in a successful marketing operation.[80] Accordingly, title III of the ATA changes the title of the chief agricultural representative from "Agricultural Attaché" to "Agricultural Counselor."[81] However, Senate attempts to expand the duties of the chief agricultural representative to make them commensurate with his upgraded title were rejected.[82] The conference committee elected instead to leave the duties of Agricultural Counselors at the discretion of the Secretary of Agriculture.

The Department of State thought that this amendment to the Agricultural Trade Development and Assistance Act of 1954 was superfluous. Moreover, it feared that the creation of yet another top official in U.S. embassies would put pressure on other executive agencies to create similar positions for their officers abroad. The result of this upgrading, it argued, would be the promotion of "top heavy" diplomatic missions.[83] To soften the impact of this legislation the State Department proposed an amendment limiting the upgrading of Agricultural Attachés to certain key U.S. diplomatic missions.[84]

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[78] *See* note 15 and accompanying text *supra*.

[79] Pub. L. No. 95-501, § 301, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1762(b) (West Supp. 1979)). The title of "Agricultural Attaché" has been uniformly applied to chief agricultural representatives since 1954 when they were moved from the Department of State to the Department of Agriculture. S. REP. NO. 1142, *supra* note 1, at 9.

[80] S. REP. NO. 1142, *supra* note 1, at 10.

[81] Pub. L. No. 95-501, § 301(5)(b) (codified at 7 U.S.C.A. § 1762(b) (West Supp. 1979)).

[82] The Senate version of the ATA expanded the Agricultural Counselor's duties beyond those specified in section 601 of the Agricultural Trade Development and Assistance Act of 1954. The Senate recommended that the Agricultural Counselor submit an annual report to the Secretary of Agriculture, the Secretary of State, and the appropriate congressional committees giving (1) a summary of the supply and demand of major agricultural commodities in his area and their prices, (2) present and projected imports and exports of agricultural commodities in his area, (3) any changes or disruptions in his area's normal trade pattern, (4) any trade barriers in his area affecting U.S. imports, (5) any impediments to domestic food production in his area, and (6) any other matters the Secretary of Agriculture deems important. S. REP. NO. 1142, *supra* note 1, at 15-16. The final conference report, however, deleted this provision, leaving the duties of the Agricultural Counselor largely up to the specifications of the Secretary of Agriculture.

[83] H.R. REP. NO. 1338, pt. 2, *supra* note 43, at 9.

[84] Pub. L. No. 95-501, § 301(5)(b) (codified at 7 U.S.C.A. § 1762(b) (West Supp. 1979)). This section provides that an Agricultural Counselor shall be appointed in any nation—

> (1) to which a substantial number of governments with which the United States competes directly for agricultural markets in such nation assign agricultural representatives with the diplomatic status of counselor or its equivalent; or
>
> (2) in which—

The ATA reflects the Department of State's proposal by providing that an Agricultural Counselor shall be appointed in any nation in which major competitors of the United States have placed agricultural representatives with counselor status or in which the potential for competition exists.[85] The implementing provision mandates the appointment of ten Agricultural Counselors within three years of the date of the ATA's enactment.[86]

IV. The Agricultural Trade Office

The final major avenue in the ATA for opening overseas markets to U.S. farm goods is the creation of agricultural trade offices.[87] The Department of Agriculture opened the first agricultural trade office in London in May 1978. The ATA authorizes the establishment of between six and twenty-five such trade offices all over the world.[88]

The primary reason for the establishment of agricultural trade offices is the current need to house operations concerning agricultural trade in a facility separate from existing U.S. diplomatic complexes. Ordinarily, the agricultural representative (Attaché or Counselor) has his office in the same complex of buildings as other U.S. diplomatic officials. Tight security in the embassy complex is extremely important, but, unfortunately, it discourages visitors from seeking trade advice. Agricultural trade offices will act as "one stop" servicing establishments for foreign visitors with the added advantage of a lower chance of interrogation upon entry.[89]

A separate facility also divides the workload of the government's agricultural representatives. At present there are ninety-eight Attachés in 110 countries.[90] Because of the great volume of trade analysis required in their position, they have been unable to concentrate on market development. The creation of agricultural trade offices with officers specially trained in marketing relieves the Attachés of this duty. "In essence, the U.S. Trade Officers would act as salesmen and trade technicians in an effort to improve U.S. exports and at the same time improve the diets and technology of the developing countries."[91] The creation of these trade offices would particularly benefit American farmers who have in-

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(A) the potential is great for long-term expansion of a market for United States agricultural commodities, and

(B) competition with other nations for existing and potential agricultural markets is extremely intense.

85 *Id.*

86 *Id.*

87 Pub. L. No. 95-501, § 401, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1765a (West Supp. 1979)).

88 The ATA, however, does not specify the period of time within which the trade offices are to be established.

89 S. REP. NO. 1142, *supra* note 1, at 10-11.

90 H.R. REP. NO. 1338, pt. 1, *supra* note 6, at 8.

91 *Id.*

sufficient capital to establish their own overseas offices.[92] Another advantage of this system of offices is the ability to coordinate the market development of several related agricultural commodities, for example, the sale of grain to feed exported livestock, discussed above.[93] The agricultural trade officer will capitalize on the natural affinity of these products and thus be able to coordinate the development of their markets.[94]

Section 401 of the ATA amends title VI of the Agricultural Act of 1954[95] to specify the major functions of an agricultural trade office. Among other more general duties the trade office should initiate regional programs to achieve export marketing goals, maintain regional facilities for the purpose of setting up exhibits and holding trade negotiations, compile a register of trade, government and other appropriate organizations for each agricultural commodity area, and publicize its services to interested parties.[96]

Both the Department of State and the House Committee on Agriculture hesitated before supporting this provision of the ATA. One concern was the cost effectiveness of the program.[97] The House Committee suggested reducing the maximum number of trade offices from twenty-five to sixteen. It maintained that since the Department of Agriculture had pinpointed sixteen areas of vital importance, these areas would be best suited for determining the success of the program.[98] It further suggested that the offices be located in regions where they could serve more than one country. Nevertheless, no such limitations were incorporated into the ATA itself.

A second concern shared by both the Department of State and the House Committee was the possible usurpation of authority by the Department of Agriculture through the establishment of offices not associated with the Department of State. Both bodies interpreted the creation of trade offices without authorization from the State Department as conflicting directly with the State Department/U.S.I.A. Authorization Act of 1975.[99] In section 401 the ATA resolves this conflict by providing that

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[92] *Id.* at 8-9.

[93] One of the primary reasons for congressional approval of the use of intermediate credit to export breeding livestock was the probability that export sales of grains and oilseeds would profit thereby. *See* text accompanying note 38 *supra*.

[94] S. REP. NO. 1142, *supra* note 1, at 11.

[95] Pub. L. No. 83-690, ch. 1041, 68 Stat. 897 (codified in scattered sections of 7 U.S.C. (1976)).

[96] Pub. L. No. 95-501, § 401, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1765b (West Supp. 1979)).

[97] H.R. REP. NO. 1338, pt. 2, *supra* note 43, at 10.

[98] Among the targeted locations are Kuwait, Hamburg and Singapore. S. REP. NO. 1142, *supra* note 1, at 11-12.

[99] The State Department/U.S.I.A. Authorization Act, Fiscal Year 1975, Pub. L. No. 93-475, § 12, 88 Stat. 1439 (codified at 22 U.S.C. § 2680a (1976)). The relevant portion of the Act reads as follows:

> (3) any department or agency having officers or employees in a country shall keep the U.S. Ambassador to that country fully and currently informed with respect to all activities and operations of its officers and employees in that country,

the Secretary of Agriculture shall decide the location of the offices in consultation with the Secretary of State.[100] According to the House Committee on Agriculture, "[c]oncurrence of the Secretary of State should not be used to frustrate that mandate, but rather to assure its fulfillment and maximum consistency with the conduct of U.S. foreign policy."[101] Thus the ATA gives to the Department of Agriculture the authority to establish trade offices, while still requiring the concurrence of the Department of State in any such decision.

V. Conclusion

The ATA proposes to enhance agriculture exports in four ways. The first and most controversial of these measures is the intermediate credit, which bridges the present financing gap between federal short-term and long-term credit programs. The intermediate credit is certain to promote litigation since it authorizes the Secretary of Agriculture to meet credit competition while forbidding him to engage in a credit war. The courts will have to draw the fine line between meeting credit competition and promoting a credit war. Second, the ATA extends CCC coverage to deferred payment sales. This measure, in the author's opinion, will be the most popular provision of the ATA because it permits countries electing financing under the deferred payment plan to deal directly with U.S. exporters instead of the federal government. The final two measures contained in the ATA best illustrate Congress' intent to sell more U.S. agricultural goods abroad. The decision to upgrade the title of the chief agricultural representative to Agricultural Counselor and the companion mandate to open up to twenty-five agricultural trade offices abroad are not just paper changes. The success of these measures depends upon the people chosen to staff these positions. The addition of intermediate credit terms and other financing arrangements to existing CCC programs will unquestionably stimulate present efforts to export agricultural goods; yet good price alone will not sell these goods. More important are the promotion and advertising preceding these sales. Sales representatives of American farm goods are thus essential to successful marketing abroad.

Overall, the ATA is a good indication of the federal government's recognition of the need to increase U.S. exports. Congress has pinpointed an economic area where the United States continues to be strong and drafted a law to capitalize on it. Increased exports of agricultural commodities will not reverse the trade deficit. They may, however, cut it

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> and shall insure that all of its officers and employees, except for personnel under the command of a U.S. area military commander, comply fully with all applicable directives of the Ambassador.

[100] Pub. L. No. 95-501, § 401, 92 Stat. 1685 (codified at 7 U.S.C.A. § 1765c (West Supp. 1979)).

[101] H.R. REP. NO. 1338, pt. 2, *supra* note 43, at 10.

back, and that, at least, is a beginning towards revitalizing the American balance of trade.

—BECKY LYNN BOWEN